

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

LEXON INSURANCE COMPANY,

Plaintiff,

-against-

JAMES C. JUSTICE II,

Defendant.

Civil Action No. 3:23-cv-00772

Judge Waverly D. Crenshaw, Jr.
Magistrate Judge Barbara D. Holmes

JOINT MOTION
ADDRESSING DISCOVERY DEADLINES FOR PREVIOUSLY BIFURCATED ISSUES

Plaintiff Lexon Insurance Company (“Plaintiff” or “Lexon”) and Defendant James C. Justice II (“Defendant” and with Plaintiff, the “Parties”), by and through their undersigned counsel, hereby move the Court to set deadlines for the Parties to complete additional discovery on damages under Counts II and III of the Complaint, which were bifurcated pursuant to the Court’s May 7, 2024 Order. (*See* ECF 1; ECF 22 at N; ECF 50; ECF 83.)

In support of this motion, the Parties state the following:

1. On May 7, 2024, the Court granted the Parties’ joint motion to bifurcate the determination of damages to which Lexon is entitled under Counts II and III from all other questions of liability and damages on the claims asserted in the Complaint. (ECF 50.)
2. On December 3, 2024, the Court granted in part Lexon’s Motion for Summary Judgment, finding Defendant liable to Lexon on Counts I–III but that issues of material fact remained as to certain aspects of the damages calculations under Count I. (ECF 68–69.)
3. On December 26, 2024, the Court granted the Parties’ joint motion to continue trial and set all remaining issues, including the damages calculation under Count I and

those subject to the Court's bifurcation order, for a bench trial beginning August 19, 2025. (ECF 78.) Part of the basis for that joint motion was that a continuance would allow the Parties sufficient time to conduct discovery on the previously bifurcated issues of damages under Counts II and III. (ECF 72, at 3.)

4. The Court's December 26, 2024 Order directed the Parties to "file any motion in limine and any motions objecting to expert testimony" by July 21 with "each motion presenting only one evidentiary issue." (ECF 78.) And, "[a]ny responses to such motions shall be filed by July 28, 2025." (*Id.* at 2.) The Court further ordered the Parties to submit the following by July 28, 2025:

- a. Joint Proposed Pretrial Order which shall contain: (1) a recitation that the pleadings are amended to conform to the Pretrial Order and that the Pretrial Order supplants the pleadings; (2) a statement of the basis for jurisdiction in this Court; (3) a short summary of the Plaintiff's theory (no more than one page); (4) a short summary of the Defendant's theory (no more than one page); (5) a statement of the issues; (6) a succinct statement of the relief sought; (7) a summary of any anticipated evidentiary disputes; and (8) an estimate of the anticipated length of the trial; and,
- b. [W]itness lists, except for witnesses solely for impeachment in accordance with Fed. R. Civ. P. 26(a)(3), with a short summary of the expected testimony; exhibit lists, except for documents solely for impeachment in accordance with Fed. R. Civ. P. 26(a)(3), with exhibits to be numbered sequentially; any stipulations; and any expert reports. (*Id.*)

5. With regard to discovery, the Court ordered the following: “Expert witness disclosures shall be made timely, in accordance with Local Rule 39.01(c)(5)c. Supplemental responses to interrogatories, requests for production and requests for admissions shall be made timely in accordance with Local Rule 33.01(a). Objections to the use of depositions at trial shall be made timely in accordance with Local Rule 39.01(c)(4).” (*Id.*)

6. The Parties have conferred and agree that additional discovery is necessary regarding the previously bifurcated issues of the amount of damages Lexon is entitled to recover under Counts II and III, including attorney fees and litigation expenses.

7. The Parties have agreed to the following additional discovery deadlines to govern discovery on the previously bifurcated issues:

- a. Parties to provide supplemental Rule 26(a) disclosures, as appropriate, by April 15, 2025.
- b. Parties to complete additional discovery on damages under Counts II and III by July 15, 2025.

8. The requested deadlines will not impact any deadlines for dispositive motions, responses, or replies.

WHEREFORE, the Parties respectfully request that the Court grant the Motion and enter an order that the following discovery schedule shall govern the remaining proceedings:

A.	Parties provide supplemental Rule 26(a) disclosures, as appropriate.	April 15, 2025
B.	Parties complete additional discovery on damages under Counts II and III.	July 15, 2025

Dated: April 3, 2025

Respectfully submitted,

/s/ W. Brantley Phillips, Jr.

W. Brantley Phillips, Jr.
Garrah Carter-Mason
BASS BERRY & SIMS PLC
21 Platform Way South, Suite 3500
Nashville, TN 37203
Phone: 615-742-6200
Email: bphillips@bassberry.com
garrah.cartermason@bassberry.com

/s/Peter C. Robison

Peter C. Robison
LEWIS THOMASON, P.C.
424 Church St., Suite 2500
Nashville, TN 37219
Phone: 615-259-1366
Email: probison@lewisthomason.com

Jason M. Halper (*admitted pro hac vice*)
Sara E. Brauerman (*admitted pro hac vice*)
Timbre Shriver (*admitted pro hac vice*)
VINSON & ELKINS LLP
The Grace Building
1114 Avenue of the Americas
32nd Floor
New York, NY 10036
Phone: 212-237-0000
Email: jhalper@velaw.com
sbraerman@velaw.com
tshriver@velaw.com

Raymond S. Franks II (*admitted pro hac vice*)
David R. Pogue (*admitted pro hac vice*)
CAREY Douglas KESSLER & RUBY PLLC
707 Virginia Street East
Charleston, WV 25301
Phone: 304-546-6038
Email: sruby@cdkrlaw.com
dpogue@cdkrlaw.com

Attorneys for Defendant

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 3, 2025, the foregoing document was filed via the Court's ECF system, which will send a notice of electronic filing to all ECF-registered counsel of record listed below:

Peter C. Robison
LEWIS THOMASON, P.C.
424 Church St.
Suite 2500
615-259-1366
probison@lewisthomason.com

David R. Pogue
Raymond S. Franks II
CAREY DOUGLAS KESSLER &
RUBY PLLC
707 Virginia Street E.
Suite 901
Charleston, WV 25301
(304) 345-1234
dpogue@cdkrlaw.com
rfranks@cdkrlaw.com

/s/ W. Brantley Phillips, Jr.